

REMARKS

Applicant amended claim 248 and added new claim 331 to further define Applicant's claimed invention. Support for new claim 331 is found at least in Fig. 5. New claim 331 reads on Species I as defined by the Restriction Requirement of July 25, 2003.

In the Office Action, the Examiner allowed claims 207-226, 237, 238, 289-330 and indicated that claims 190-195 and 270-275 would be allowable if rewritten in independent form to include all of the limitations of the base claim and any intervening claims. Applicant respectfully requests the rejoinder and examination of dependent claims 239-242, 245, and 246, dependent from allowed generic independent claim 207 or claims dependent therefrom, in accordance with 37 C.F.R. § 1.141.

The Examiner rejected claims 172-189, 201, 202, 247-269, and 276-288 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,873,915 to Brantigan. Applicant respectfully traverses the Examiner's rejection over claims 172-189, 201, 202, and 247. Independent claim 172 recites a guard having a distal end "contoured to the curvature of the adjacent vertebral bodies." Brantigan teaches a drill guard having teeth 23 for penetrating the posterior sides of the vertebrae. (Brantigan, col. 5, lines 41-45; Fig. 4). Brantigan does not teach or suggest a guard as recited in independent claim 172.

Independent claim 176 recites a guard "having an increased outer dimension portion at its proximal end." Guard 22 of Brantigan does not teach or suggest an increased outer dimension at the proximal end. (See, e.g., Brantigan, Fig. 4). Accordingly, Applicant submits that independent claim 176 is patentable over Brantigan.

Independent claim 248, as now amended, recites a guard having extensions at the distal end of the guard, "said extensions being at least in part in line with side surfaces of said passage." Teeth 23 of the Brantigan guard are not at least in part in line with the passage of the guard. (See, e.g., Brantigan, Fig. 4). Accordingly, Applicant submits that independent claim 248 is patentable over Brantigan and that dependent

claims 249-269 and 276-288, dependent from claim 248 or claims dependent therefrom, are patentable at least due to their dependency from an allowable independent claim.

Applicant submits that independent claims 172, 176, and 248 are patentable and that dependent claims 173-175, 177-189, 201, 202, 247, 249-269, and 276-288 dependent from one of independent claims 172, 176, and 248, or claims dependent therefrom, are patentable at least due to their dependency from an allowable independent claim.

In view of the foregoing remarks, it is respectfully submitted that the claims, as amended, are patentable. Therefore, it is requested that the Examiner reconsider the outstanding rejections in view of the amendments to the claims and preceding comments. Issuance of a timely Notice of Allowance of the claims is earnestly solicited.

To the extent any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this reply, such extension is hereby respectfully requested. If there are any fees due under 37 C.F.R. §§ 1.16 or 1.17 which are not enclosed herewith, including any fees required for an extension of time under 37 C.F.R. § 1.136, please charge such fees to our Deposit Account No. 50-1068.

Respectfully submitted,

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Dated: July 23, 2004

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